IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.R. No. 5245 of 1998
Date of Decision: 11.10.2006

Mukat Kumar.

..... Petitioner.

Versus

Jiwan Ram and another.

..... Respondents.

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri R.K.Gupta, Advocate for the petitioner.
ShriAjay Jain, Advocate for respondent no.1.

....

Mahesh Grover,J.

The present revision petition has been preferred by the tenant, who was ordered to be evicted from the premises in question on the ground that the house tax which was tendered along with the arrears of rent was short by Rs.7.50.

Briefly stated the facts of the case are that the petitioner was originally inducted as tenant on the demised premises by respondent no.2-Mam Raj in the year 1985 at a monthly rent of Rs.370/- plus house tax. Subsequently, respondent no.1-Jiwan Ram became the owner of the demised premises. An eviction petition under the provisions of Section 13 of the Haryana Urban (Control of Rent and Eviction) Act,1973 (for short, `the Act') was filed by respondent no.1 against the petitioner on the following grounds:-

(1)That the petitioner was in arrears of rent from 29.12.1987 to

29.6.1991 at the rate of Rs.370/- per month, besides house tax at the rate of 12-1/2% per annum.

(2) Change of user.

The petitioner contested the petition and also tendered a sum of Rs.11100/- as arrears of rent and Rs.1380/- as house tax, plus Rs.1147/- as interest and Rs.140/- as costs. Thus, a total sum of Rs.13767/- was deposited by the petitioner.

The petition was pursued before the Rent Controller, Narnaul only on the first ground, i.e., arrears of rent and the second issue was not pressed.

The Rent Controller dismissed the eviction petition vide his order dated 18.1.1993 which led to the filing of an appeal by respondent no.1 before the Appellate Authority, Narnaul, who accepted the same vide judgment dated 29.9.1998 and ordered eviction of the petitioner by holding that even though, the arrears of rent were duly deposited, yet, tender against arrears of house tax was short by Rs.7.50.

Feeling aggrieved by the decision of the Appellate Authority, the petitioner has filed the present revision petition.

Shri R.K.Gupta, learned counsel for the petitioner contended that the petitioner had deposited the arrears of rent and the house tax, as was demanded by respondent no.1 and once the claim as raised in the eviction petition was satisfied, then the amount tender by the petitioner cannot be faulted. He also referred to the receipts which showed the acceptance of house tax at the rate of Rs.46/- per month by the landlord in the previous years. Learned counsel further contended that in any eventuality, since the dispute was only regarding the payment of house tax and rent, the Appellate

Authority ought to have followed the dictum as laid down in Rakesh Wadhawan Versus Jagdamba Industrial Corp., (2002) 5 S.C.C. 440 and Vinod Kumar Versus Prem Lata, 2003(11) S.C.C. 397.

Shri Ajay Jain, learned counsel for respondent no.1 controverted the contentions raised by the learned counsel for the petitioner on the ground that the rate of house tax was clearly stipulated in the petition as being 12-1/2% per annum of the rate of rent which was stated to be Rs.370/-per month and simple calculation would show that the house tax was to be paid at the rate of Rs.46.25, whereas the tender made by the petitioner was at the rate of Rs.46/-. He urged that the eviction orders passed by the Appellate Authority are justified and deserved to be upheld.

I have thoughtfully considered the contentions of the learned counsel for the parties and perused the record.

There is no dispute regarding the rate of rent and deposit made by the petitioner on that count. There is evidence in the shape of rent note Exhibit R1. The writing (Exhibit R2) at the back of this rent note reveals the payment of rent made by the petitioner for the period from 30.4.1987 to 30.12.1988 at the rate of 370/- per month. The writing further shows that the house tax was being paid to the landlord at the rate of Rs.46/- per month. A perusal of the eviction petition preferred by respondent no.1 under Section 13 of the Act also shows that he had made a demand of payment of rent for the period from 29.12.1987 to 29.6.1991 and had also specified the amount of house tax by pegging it at Rs.1890/- for a period of 42 months which, if calculated, comes to Rs.45/- per month. The petitioner had satisfied the claim as made by respondent no.1. There was, thus, sufficient discharge of the liability to pay the rent and the house tax.

Default in payment of the rent and other incidental amounts which form the basis of tenancy has to be inferred from the intention of the tenant. The facts of the present case reveal that there was no dispute regarding the rate of rent or the house tax. Respondent no.1 himself had been accepting house tax at the rate of Rs.46/- per month and even in his petition, he had calculated it at Rs.45/- per month. Previous conduct of both the parties is indicative of the fact that the house tax was being paid and accepted at the rate of Rs.46/- per month. The minor difference of Rs.7.50 cannot be given undue weightage in the backdrop of the demand raised by respondent no.1 and his own conduct in accepting the house tax at the rate of Rs.46/- per moth.

That apart, the Supreme Court in Rakesh Wadhawan's case (supra) and subsequent judgments has also held that the tenant ought to be given an opportunity to make the payment of the arrears of rent after a provisional assessment has been made by the Rent Controller. The case in hand, however, suffers from an apparent bona fide error which is borne out from the demand as raised by respondent no.1 in his petition and his previous practice of accepting the house tax at the rate of Rs.46/- per month.

For the foregoing reasons, the orders of eviction passed against the petitioner by the Appellate Authority cannot be sustained.

In the result, the revision petition is accepted and judgment dated 29.9.1998 rendered by the Appellate Authority, Narnaul is set aside.

October 11,2006 (Mahesh Grover)
"SCM" Judge